



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

APR 08 2013

Bradley W. Hertz, Esq.  
The Sutton Law Firm, PC  
150 Post Street, Suite 405  
San Francisco, CA 94108

RE: MUR 6716  
National Campaign Fund and James Lacy in  
his official capacity as treasurer

Dear Mr. Hertz:

On April 3, 2013, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. § 434(b) and (g) and 11 C.F.R. § 104.4(a), (b) and (c), provisions of the Federal Election Campaign Act of 1971, as amended, and Commission regulations. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

*Dominique Dillenseger*  
Dominique Dillenseger  
Attorney

Enclosure  
Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
The National Campaign Fund )  
and James Lacy in his official capacity as treasurer )

MUR 6716 OFFICE OF  
COUNSEL

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**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that The National Campaign Fund and James Lacy in his official capacity as treasurer ("the Committee" or "Respondents") violated 2 U.S.C. §§ 434(b) and (g), provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act") and 11 C.F.R. § 104.4(a), (b), and (c), provisions of the Commission's regulations.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The National Campaign Fund is a political committee within the meaning of 2 U.S.C. § 431(4), and is not the authorized committee of any candidate.
2. James Lacy is the treasurer of the National Campaign Fund.

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3. Committee Treasurers must file reports of disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. §§ 434(a)(1), (b)(4).

4. An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified Federal candidate and is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent. 2 U.S.C. § 431(17). Under the Commission's regulations at 11 C.F.R. § 100.22(a), express advocacy includes phrases such as "vote for the President" or "defeat" accompanied by a picture of one or more candidates. It also includes campaign slogans or individual words, "which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)." *Id.*; *see also* 11 C.F.R. § 100.22(b).

5. Every political committee that makes independent expenditures must report those expenditures in its regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii). 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee. The report must also disclose the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. 2 U.S.C. § 434(b)(6)(B)(iii); 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(a). Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.* Further, a debt or obligation over \$500 must be reported as of the date on which the debt or obligation is incurred. 11 C.F.R. § 104.11(b). Independent expenditures made

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(i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as reportable debt on Schedule D (Debts and Obligations). Committees are required to maintain records that provide information with sufficient detail so that the reports may be verified. 11 C.F.R. § 104.14(b)(1).

6. Under certain circumstances, independent expenditures made by a political committee require additional immediate disclosure prior to the disclosure on the committee's regularly scheduled disclosure reports. A political committee that makes or contracts to make independent expenditures aggregating \$10,000 or more in connection with a given election at any time during a calendar year up to and including the 20<sup>th</sup> day before the date of an election is required to file a report describing the expenditures within 48 hours. 2 U.S.C. § 434(g)(2); 11 C.F.R. § 104.4(b)(2). These reports, known as 48-hour notices, must be filed by the end of the second day "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(b)(2). A committee is required to file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*

7. A political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more in connection with a given election after the 20<sup>th</sup> day but more than 24 hours before the date of an election is required to file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1); 11 C.F.R. § 104.4(c). These reports, known as 24-hour notices, must be filed within 24 hours "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(c). A political committee must file additional reports within

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24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*

8. The Committee is a non-connected committee that has been filing reports with the Commission since January 2008.

9. A Commission audit of the Committee's records for the 2007-2008 election cycle determined that:

- a. the Committee misstated its financial activity by understating its net disbursements by \$100,887.
- b. the Committee failed to file timely 24- and 48-hour notices for independent expenditures totaling \$946,596, as required by 2 U.S.C. § 434(g) and 11 C.F.R. § 104.4(b) and (c);
- c. the Committee failed to file 48-hour notices for independent expenditures totaling \$51,130, as required by 2 U.S.C. § 434(g) and 11 C.F.R. § 104.4(b); and
- d. the Committee did not properly disclose independent expenditures totaling \$447,413 prior to payment as memo entries on Schedule E and as reportable debts on Schedule D (Debts and Obligations), as required by 2 U.S.C. § 434(b)(6)(B)(iii) and 11 C.F.R. § 104.4(a).

V. Respondents violated 2 U.S.C. §§ 434(b) and (g) and 11 C.F.R. § 104.4(a), (b), and (c) by misstating the Committee's financial activity, failing to timely file 24-Hour and 48-Hour Notices and failing to properly disclose independent expenditures.

VI. 1. In ordinary circumstances, the Commission would seek a substantially higher civil penalty based on the violations outlined in this agreement. However, the Commission is

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taking into account that the Committee is defunct, has no cash on hand, and according to Respondents has a limited ability to raise any additional funds. In addition, Respondents intend to file a termination report with the Commission, which will be processed in accordance with the applicable provisions of the Act and Commission regulations. In light of these factors, Respondents will pay a civil penalty to the Federal Election Commission in the amount of Five Thousand Dollars (\$5,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will cease and desist from violating 2 U.S.C. §§ 434(b) and (g) and 11 C.F.R. § 104.4(a), (b) and (c).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

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oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

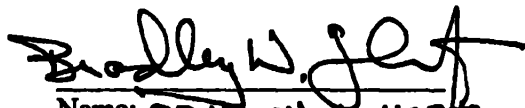
Anthony Herman  
General Counsel

BY: 

Daniel A. Petalas  
Associate General Counsel  
for Enforcement

4/5/13  
Date

FOR THE RESPONDENTS:



Name: BRADLEY W. HERTZ, ESQ.

3/11/13  
Date

Position: THE SUTTON LAW FIRM PC  
COUNSEL FOR RESPONDENTS

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